STATE OF MINNESOTA

IN SUPREME COURT

A22-1403

In re Petition for Disciplinary Action Against
Clayton D. Halunen, a Minnesota Attorney,
Registration No. 0219721.

O R D E R

The Director of the Office of Lawyers Professional Responsibility has filed a petition for disciplinary action alleging that respondent Clayton D. Halunen has committed professional misconduct warranting public discipline. Specifically, the petition alleges that Halunen sexually harassed two men employed by Halunen Law. Halunen committed this misconduct when he was the sole owner and managing partner of the firm. Halunen originally contacted one of the men, who was 19 years old and worked at a fast-food restaurant, using a dating app. When the two met, Halunen encouraged him to apply for a job at his law firm. The second person was a law student whom Halunen initially messaged over social media. He was later hired as a summer extern at Halunen Law. Halunen engaged in repeated acts of unwelcome physical and verbal conduct of a sexual nature with these men. Halunen subjected one of them to more serious repeated acts of unwelcome, sexual contact. *See* Minn. R. Prof. Conduct 8.4(g), 8.4(h). And Halunen attempted to convince the two employees not to make their allegations public by threatening them with civil action, criminal prosecution, and professional consequences. *See* Minn. R. Prof. Conduct 8.4(d). Finally, Halunen provided legal advice to one of the

employees who was unrepresented and had interests that conflicted with those of Halunen. *See* Minn. R. Prof. Conduct 4.3(d).

The parties have filed a stipulation for discipline. In it, Halunen waives his procedural rights under Rule 14, Rules on Lawyers Professional Responsibility (RLPR), waives his right to answer, and unconditionally admits the allegations in the petition. The parties jointly recommend that the appropriate discipline is a 6-month suspension, followed by 2 years of supervised probation, and that we waive the reinstatement hearing provided for in Rule 18(a) through (d), RLPR, and allow Halunen to petition for reinstatement under Rule 18(f), RLPR. Without such a waiver, lawyers suspended for more than 90 days are required to petition for reinstatement and have a reinstatement hearing (reinstatement hearing process) under our rules. *See* Rule 18(a)–(d), RLPR.

Along with the stipulation, the parties have filed a memorandum explaining why they believe the recommended discipline and request to waive the reinstatement hearing process are appropriate. The parties assert that mitigating factors support the recommended suspension. They point to Halunen's genuine remorse for his misconduct and the corrective actions he took within his practice before a complaint was filed with the Director, such as removing himself from certain hiring decisions and establishing a workplace hotline to report employee concerns. The reinstatement hearing process should be waived, the parties contend, because of these mitigating factors and other actions Halunen took after his misconduct came to light, including beginning treatment with a psychologist in 2019.

We retain the ultimate responsibility for determining the appropriate discipline. *In re Eskola*, 891 N.W.2d 294, 298 (Minn. 2017). The purpose of discipline for professional misconduct is not to punish the attorney but to protect the public and the judicial system and to deter future professional misconduct. *In re Plummer*, 725 N.W.2d 96, 98 (Minn. 2006). Halunen's misconduct is very serious. The facts of the petition establish that Halunen targeted men who were vulnerable due to their age and socioeconomic status, encouraged them to work for his firm, and then sexually harassed them. The sexual harassment was egregious because of the number of incidents—many of which involved intimate, physical sexual contact—and Halunen's repeated exploitation of the power imbalance between himself and his employees. And Halunen threatened both men in an attempt to keep his misconduct hidden. Given these admitted facts, the court is in full agreement that the recommended discipline and request to waive the reinstatement hearing process are inadequate to protect the public and the judicial system and to deter future misconduct by the individual attorney and other attorneys as well.

We conclude that the appropriate disposition is a 1-year suspension and that Halunen comply with the reinstatement hearing process before reinstatement. The separate concurrence and dissent instead asserts that we should suspend Halunen for 18–24 months. The concurrence and dissent contends three decisions support a longer suspension: *In re Kennedy*, 946 N.W.2d 568 (Minn. 2020), *In re Bulmer*, 899 N.W.2d 183 (Minn. 2017), and *In re Strunk*, 945 N.W.2d 379 (Minn. 2020). Each of these cases, however, is distinguishable.

We imposed a 2-year suspension in *Kennedy* on an attorney who sexually harassed a client by subjecting her to repeated, unwelcome sexual comments, attempting to have sexual relations with this client, and then making knowingly false statements to the police and the Director about his misconduct. 946 N.W.2d at 576–79, 583. Unlike Halunen, Kennedy sexually harassed a vulnerable *client* and made repeated false statements. Moreover, there were three aggravating factors in *Kennedy*: Kennedy's extensive disciplinary history, his probationary status when committing the misconduct, and his false statements to the referee at the disciplinary hearing. *Id.* at 581–83 (explaining that "substantial discipline" was warranted because of Kennedy's "disciplinary history and probationary status"). There are no comparable aggravating factors here.[1]

We imposed a 3-year suspension in *Bulmer* on an attorney who had sexual relations with the wife of a client "in exchange for a reduction or forbearance of his fee," made false statements to an assistant county attorney about the sexual relations, and had sexual relations with a client. 899 N.W.2d at 184–85. Unlike Halunen, Bulmer's misconduct involved and harmed clients. *Id.* at 184–85 (explaining that Bulmer created a conflict of interest when he had a sexual relationship with a client's wife, that Bulmer "betray[ed]" both his client and his client's wife, and that Bulmer's "false statements tended to undermine his own client's claim for postconviction relief"). And Bulmer's misconduct was aggravated because he had previously engaged in the same type of misconduct. *Id.* at 183 (explaining that Bulmer had been admonished three times and that one admonition was

[1] For example, Halunen's disciplinary history consists of three admonitions, none of which are recent.

for having "sexual relations with a witness while representing a criminal defendant"). Halunen has not been disciplined for the same type of misconduct.

Finally, *Strunk* bears little resemblance to this case. In *Strunk*, we suspended a lawyer for 5 years for distributing child pornography and for five felony convictions for possessing child pornography. 945 N.W.2d at 382, 388. "Strunk possessed nearly 100 pornographic images of child victims of abuse and sexual exploitation, including infants." *Id.* at 386. We concluded that "the presumptive sanction" of disbarment "for felony misconduct is particularly appropriate in cases concerning sexual crimes against children." *Id.* at 387. Based on the specific circumstances in *Strunk*, we did not disbar Strunk and instead suspended him for 5 years. *See id.* at 387–88. Halunen has not been accused by the Director, nor charged or convicted of any criminal acts in relation to this misconduct, nor does his misconduct involve children. And we have not stated that the presumptive sanction for sexual harassment is disbarment.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Respondent Clayton D. Halunen is indefinitely suspended from the practice of law, effective 14 days from the date of this order, with no right to petition for reinstatement for 1 year.

2. Respondent may petition for reinstatement under Rule 18(a)–(d), RLPR. Reinstatement is conditioned on successful completion of the written examination required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility, *see* Rule 18(e)(2), RLPR; *see also* Rule 4.A.(5), Rules for

Admission to the Bar (requiring evidence that an applicant has successfully completed the Multistate Professional Responsibility Examination), and satisfaction of continuing legal education requirements, *see* Rule 18(e)(4), RLPR.

3. Respondent shall comply with Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals), and shall pay $900 in costs under Rule 24, RLPR.

Dated: March 30, 2023

BY THE COURT:

Natalie E. Hudson

Natalie E. Hudson
Associate Justice

C O N C U R R E N C E & D I S S E N T

McKEIG, Justice (concurring in part and dissenting in part).

I respectfully concur in part and dissent in part. This case comes before us on the parties' stipulation for discipline, which asks the court to adopt their agreement that respondent Clayton D. Halunen be suspended from the practice of law for 6 months, placed on probation for 2 years, and waive the requirement that he petition for reinstatement. The court rightly declined to waive the petition-for-reinstatement requirement and rejected the proposed time period of Halunen's suspension, decisions I concur with. However, I write separately to dissent because, in my view, the severity of Halunen's misconduct warrants a longer suspension than 1 year. I would suspend Halunen indefinitely with no right to petition for reinstatement for 18–24 months.

For 2½ years, Halunen engaged in a pattern of sexual misconduct involving two subordinates in his law firm. The sexual misconduct began with Halunen's over-the-clothing groping of a 19-year-old employee. Halunen's sexual misconduct with this employee escalated into unwanted kissing, aggressive physical touching and groping, soliciting sex through text messages, soliciting explicit photographs from the employee, and sexual relations. This conduct occurred both in and out of the workplace. The employee felt compelled to accept Halunen's advances because he feared losing his job. After the employee quit his job, he served Halunen's firm with a demand letter describing the sexual misconduct he experienced. Halunen, knowing the employee was self-represented, threatened him with criminal charges and provided him with unwanted legal advice—including advice not to obtain counsel.

During this same timeframe, Halunen hired a second-year law student as an extern. Halunen communicated with the extern through social media and text messages, and these communications included repeated sexual and salacious comments towards the extern. Halunen took the extern to a mediation out of state and made unwanted sexual advances towards the extern during the trip. A similar situation happened later that summer on a trip to Halunen's cabin. When the extern did not reciprocate Halunen's unwanted contact, Halunen sent him a text that seemed to withdraw a tentative job offer and told the extern that he would have to earn a future position with the firm based on his performance[1] After the extern quit, Halunen threateningly contacted the extern repeatedly.

The stipulation relies on *In re Griffith*, 838 N.W.2d 792 (Minn. 2013), to support its discipline recommendation. *Griffith* involved an attorney who made unwelcome comments about a law student's appearance, made unwanted physical contact with the student, and tried to convince the student to recant her reports to authorities about him. 838 N.W.2d at 792. Griffith entered a stipulation that recommended a 90-day suspension, which this court imposed. *Id.* at 792–93. As detailed in Justice Lillehaug's dissent, Griffith made inappropriate comments and had inappropriate contact with a student—this misuse

[1] While the petition does not state Halunen offered the extern employment, the petition does repeatedly state that the extern believed he would be offered a job as an associate at the firm when he graduated from law school. The petition also states that the extern's belief caused him to feel like he had to acquiesce to Halunen's inappropriate sexual conduct. After the extern rebuffed Halunen's advances, Halunen sent him a text message that said "[t]here will be no guarantee of employment – you will earn any position at the firm based upon your performance – nothing more or less." Given these facts, it is a logical inference that Halunen's communication was meant to punish the extern by making clear any previous discussion of a job offer was no longer valid.

of his position of power as a teacher to sexually harass a law student was, by itself, "serious misconduct." *Id.* at 795 (Lillehaug, J., dissenting). Griffith acted as the student's field supervisor for an independent clinic. *Id.* at 793 (Lillehaug, J., dissenting). Griffith and the student met weekly and during their third meeting Griffith engaged in unwelcome, sexual-in-nature, verbal and physical conduct with the student. *Id.* at 793–94 (Lillehaug, J., dissenting). Halunen's conduct is similarly manipulative and egregious but far more insidious and pervasive than the conduct in *Griffith*. Halunen's conduct involved sexual misconduct with two employees—whom he was in a position of power over—recurrently during a longer period, and when they severed ties with him, Halunen used his position as an attorney to threaten, manipulate, and/or mislead them.

Griffith is not the only helpful decision to review. There are three other cases I believe are relevant, even though they may be distinguishable. In *In re Kennedy*, 946 N.W.2d 568, 573 (Minn. 2020), Kennedy sexually propositioned his client in exchange for his representation on a low-level criminal matter. The client reported Kennedy to the police, which led to a subsequent investigation by the Director, and Kennedy lied and told the Director that he never sexually propositioned the client. *Id.* Kennedy also had an ample disciplinary history. *Id.* We suspended Kennedy for 2 years. *Id.* at 583. While *Kennedy* involves an attorney's conduct with a client rather than employees, Halunen's sexual conduct was more pervasive and involved multiple instances of unwanted sexual conduct against two employees.

In *In re Bulmer*, Bulmer represented a client on a murder charge and had sex with the client's wife in exchange for a reduction of his fee. 899 N.W.2d 183, 184 (Minn. 2017).

Bulmer also had a sexual relationship with a client he represented in a DWI matter. *Id.* Bulmer had previously engaged in similar misconduct. *Id.* at 183. We suspended Bulmer for 3 years. *Id.* at 185. Bulmer's conduct involved a single incident with each victim whereas Halunen's conduct was persistent and pervasive towards each employee over the course of 2½ years.

Additionally, in both *Bulmer* and *Kennedy*, the attorneys used their positions of power to pressure and manipulate clients or their families into sexual contact. Halunen's actions are no different—he used his status as the owner of a law firm to coerce his subordinates into engaging in sexual contact with him.

In *In re Strunk*, Strunk pleaded guilty to five counts of possession of child pornography. 945 N.W.2d 379, 382 (Minn. 2020). When Strunk's disciplinary proceedings commenced, he had voluntarily suspended his practice, underwent a psychosexual evaluation, and started treatment. *Id*. Strunk also candidly admitted his criminal conduct. *Id.* The referee found Strunk's diagnosis for unspecified paraphilic disorder was a mitigating factor and recommended he be suspended for 3 years with 1 year of credit for his self-imposed suspension. *Id.* at 383. We determined that Strunk's diagnosis did not qualify as a mitigating factor and suspended him for 5 years. *Id.* at 384–89. The situation in *Strunk* is distinct from Halunen's case in that Strunk pleaded guilty to criminal charges. Strunk's sexual misconduct, however, occurred distinctly and separately from his legal practice. Even so, we suspended Strunk for 5 years, in part because "[a]s a self-regulated profession, the criteria we consider for admission to the Minnesota bar include an individual's ability to be honest and candid, use good judgment,

conduct oneself with respect for and in accordance with the law, and avoid acts that exhibit disregard for the rights or welfare of others." *Id.* at 386.

As always in attorney discipline cases, we act not to punish the wrongdoer but to protect the public, deter future misconduct, and restore public confidence in the legal system. *See In re Crandall*, 699 N.W.2d 769, 771 (Minn. 2005) ("Disciplinary sanctions for professional misconduct are imposed to protect the public and the judicial system, and to deter future misconduct."). A 1-year suspension does not sufficiently reflect the seriousness of Halunen's misconduct and the harm it causes to the legal profession and public perception of the profession. Halunen's conduct was intrinsically intertwined with his legal practice. He used his position as an attorney and employer to pressure his employees into acquiescing to his sexual advances. He also used his position as a prominent attorney to intimidate, threaten, and mislead his victims after they quit. Halunen's conduct, like that of the attorneys in *Strunk*, *Bulmer*, and *Kennedy*, impacts the public perception of the legal profession because Halunen has demonstrated that he does not "use good judgment," cannot conduct himself "with respect for and in accordance with the law," and exhibited a serious "disregard for the rights or welfare of others." *See Strunk*, 945 N.W.2d at 386. While the Director believes Halunen has expressed genuine remorse for his misconduct, the mitigating factor of even sincere remorse can be discounted in an attorney discipline case depending on its timing. *See In re Klotz*, 909 N.W.2d 327, 340 (Minn. 2018) ("[E]ven though Klotz's remorse is sincere, the timing of it leads us to give this mitigating factor little weight."). In this case, it is very hard to judge Halunen's alleged remorse given that his statements of remorse are given in a stipulation submitted at the end

of a disciplinary action. These statements are obviously self-serving and lack the support of a record from an evidentiary hearing where Halunen and others could have testified about his remorse. Furthermore, claimed remorse without discipline proportionate to the misconduct does not repair the damage to the public's perception of the legal profession caused by the misconduct. Based on the specific facts of this case, a longer suspension would better protect the public, deter future misconduct, and restore the public confidence in the legal profession's ability to self-regulate and protect the vulnerable within the profession. For these reasons, I believe an 18- to 24-month suspension would be more appropriate. As such, I respectfully concur in part and dissent in part.

MOORE, III, Justice (concurring in part and dissenting in part).

I join in the concurrence in part and dissent in part of Justice McKeig.